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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PATRICIA BROYLES,  
Plaintiff,

vs.

A.U.L. CORPORATION LONG-TERM  
DISABILITY INSURANCE PLAN,  
Defendant,

STANDARD INSURANCE COMPANY,  
Real Party at Interest.

CASE NO. C07-05305 MMC

**REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF PLAINTIFF'S MOTION  
FOR DE NOVO STANDARD OF  
REVIEW**

Date: August 1, 2008  
Time: 9:00 a.m.  
Ctmm: 7 (19<sup>th</sup> Floor, San Francisco)  
Judge: Honorable Maxine M. Chesney



## **EXHIBIT A**

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE**

45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105

TO: ALL DISABILITY INSURERS DOING BUSINESS IN CALIFORNIA  
Class 6; California Insurance Code Section 106

SUBJECT: NOTICE TO WITHDRAW APPROVAL AND ORDER FOR  
INFORMATION

DATE: FEBRUARY 27, 2004

**PART I: NOTICE TO WITHDRAW APPROVAL** pursuant to California Insurance  
Code §§ 10291.5(f); 12957

The Insurance Commissioner withdraws any approval of the forms listed below for the reason that the forms contain Discretionary Clauses. Such clauses are objectionable under California Insurance Code § 10291.5(b)(1) which prohibits the approval of any forms containing provisions that are “unintelligible, uncertain, ambiguous, or abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued.” These clauses effectively deprive California insureds of protections under California law.

“Discretionary Clauses” are contract provisions that purport to confer on the insurer discretionary authority to determine eligibility for benefits and to interpret the terms and provisions of the policy. Included in this definition are sole discretion clauses, allocation of authority provisions, interpretation of plan provisions and other similar terms.

However, the order for withdrawal of approval will be set aside with regard to an individual insurer if the affected insurer agrees in writing before the expiration of the 91-day period following this notice, to amend all its insurance product forms to delete all Discretionary Clauses or other language having the same legal effect, and all such amendments are reviewed and accepted by the Commissioner.

**REASONS FOR WITHDRAWAL OF APPROVAL**

? Discretionary Clauses render the contract “fraudulent or unsound insurance” within the meaning of Insurance Code §10291.5. Although the contract contains the insurer’s promise to pay benefits under the stated conditions, the discretionary clause makes those payments contingent on the unfettered discretion of the insurer, thereby nullifying the promise to pay and rendering the contract potentially illusory.

? Because the discretionary clause effectively negates operative terms of the contract, the contract becomes unintelligible, uncertain, ambiguous, abstruse and likely to mislead the insured, in violation of Insurance Code § 10291.5(b)(1). The commissioner is prohibited from approving such contracts or provisions. Insurance Code § 10291.5 (b). The

discretionary clause may cause California insureds to believe the insurer's decision to be final and to accept an unjustified denial of benefits.

? Under Insurance Code § 10291.5(b)(13), disability insurance contracts may not be approved if they "fail to conform in any respect with any law of this state." Therefore, insureds may not be deprived of the protections of California insurance law, including the covenant of good faith and fair dealing, the principles of contract interpretation such as the rule of reasonable interpretation or the law of adhesion contracts under which ambiguities are resolved in favor of the insured.

? In the case of group, employer-sponsored disability contracts that are governed by ERISA, the presence of a discretionary clause has the effect of limiting judicial review of a denial of benefits to a review for abuse of discretion. An insurer's denial of benefits will not be overruled by the court unless the insurer's decision is found to be "arbitrary and capricious". This standard of review deprives California insureds of access to the protections in the Insurance Code and in California law.

Under California Insurance Code § 10291.5(f), withdrawal of approval will be effective 91 days after the mailing of this notice unless, within 30 days of the mailing of this notice, an adversely affected insurer requests a hearing. Because more than one insurer may request a hearing, no hearing will be set until the 30-day period has expired unless all named insurers have responded.

The commissioner withdraws approval of the following insurance contracts and forms containing discretionary clauses. After 91 days following mailing of this notice, the following forms may not be marketed, offered, issued or delivered in California or to California insureds:

UNUM Life Insurance Company Forms CFP.1 and CCFP.1 including (1) any later revised forms, (2) any related policies or certificates and (3) any related Summary Plan Descriptions (SPD's) distributed to certificate holders

Provident Life and Accident Insurance Company Form LTD83702-CA including (1) any later revised forms, (2) any related certificates or policies and (3) any related Summary Plan Descriptions (SPD'S) distributed to certificate holders

Hartford Life Insurance Company Forms Z-LTD and GLT-44278 including (1) any later revised forms, (2) any related certificates or policies and (3) any related Summary Plan Descriptions (SPD'S) distributed to certificate holders

Hartford Life and Accident Insurance Company Forms Z-LTD, Z-LTD C001, GLT-044412 including (1) any later revised forms, (2) any related certificates or policies and (3) any related Summary Plan Description (SPD's) distributed to certificate holders

Metropolitan Life Insurance Company Form G24303 including (1) any later revised forms, (2) any related policies or certificates and (3) any related Summary Plan Descriptions (SPD'S) distributed to certificate holders

**PART II: ORDER FOR INFORMATION** pursuant to California Insurance Code §§ 10508.6; 12924

The Insurance Commissioner directs all insurers licensed to offer disability insurance in California to create and submit to him a list of its forms which currently may be offered to California insureds that would (1) provide disability income, health or other coverages classified under California Insurance Code §106 and (2) contain Discretionary Clauses similar to those described in this notice.

The list shall include (1) the form numbers of policies, certificates, SPD's, riders or other forms evidencing coverage. It shall also identify for each form number (2) the type of form (for example: policy) and (3) the type of coverage (for example: disability income).

This list shall include and shall identify (4) those forms previously approved by the commissioner as well as (5) those offered for use without such approval. The list shall be certified by an officer of the company.

The lists shall be delivered within 45 days of the date of this notice to:

California Department of Insurance  
45 Fremont Street, 21st Floor  
San Francisco, CA 94105  
Attn: Jean Hipon

Or by e-mail in Excel format to: [hiponj@insurance.ca.gov](mailto:hiponj@insurance.ca.gov)

Questions about this order should be directed via e-mail to one of the following persons:

Alice Gates, Senior Staff Counsel at: [gatesa@insurance.ca.gov](mailto:gatesa@insurance.ca.gov)  
Cximare Dye, Staff Counsel at: [dyec@insurance.ca.gov](mailto:dyec@insurance.ca.gov)  
Caitlin Smith, Staff Counsel at: [smithc@insurance.ca.gov](mailto:smithc@insurance.ca.gov)  
Elena Asturias, Staff Counsel at: [asturiase@insurance.ca.gov](mailto:asturiase@insurance.ca.gov)  
Nancy Neu, Staff Counsel at: [neun@insurance.ca.gov](mailto:neun@insurance.ca.gov)

Dated: February 27, 2004

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JOHN GARAMENDI  
California Insurance Commissioner